by him extinguishes the instrument, and no action can thereafter be maintained on it. Where the drawer has no funds in the drawee's hands, an action by the latter for the amount advanced to take up the paper, is not on the paper itself, but on an implied assumpsit. 2 Daniel Neg. Inst. 1236. It is otherwise where the action is by any other party to the paper than the primary debtor—the drawer, payee or indorsee, for example, against the maker or acceptor. In the latter case, the action is on the paper itself, and hence on a written contract. *Connor* v. *Becker*, (Neb.), 76 N. W. 891; *Martin* v. *Lewis*, 30 Gratt. 672, 682. See *Tate* v. *Winfree*, and note, *ante* p. 837.

DEATH OF EXECUTOR—SECURITY PAYABLE TO EXECUTOR—AGTION BY ADMINISTRATOR DE BONIS NON.—A, as executor of B, held a bond secured by mortgage payable to himself as executor. Upon A's death, C, as administrator *de bonis non* of B, brought suit to foreclose the mortgage. On demurrer, *Held*, that the administrator *de bonis non* might maintain the suit. *Parker* v. *Fay* (N. J.), 47 Atl. 499.

The courts are not thoroughly agreed as to who is the proper plaintiff in a suit on a security payable to an executor as such, after the latter's death—the question being whether it passes to the representative of the deceased executor, or to the administrator *de bonis non* of the original testator. It seems to be generally conceded that so long as the executor is himself alive, he may sue on a security payable to himself as executor, either in his individual or in his representative character. *Bull* v. *Palmer*, 2 Lev. 165; *Myers* v. *Weger*, 62 N. J. Law, 432, 42 Atl. 280; *Lawson* v. *Lawson*, 16 Gratt. 230, 80 Am. Dec. 702, and note; *Sanders* v. *Blain*, 6 J. J. Marshall, 446, 22 Am. Dec. 86; especially as in such case the description as "executor," "personal representative," etc., may probably be regarded as *descriptio personae*, and treated as surplusage. See *Clarkson* v. *Booth*, 17 Gratt. 490, 496, 498; *Belvin* v. *French*, 84 Va. 81; 3 Rob. Practice (New) 518.

The rule seems to be settled in England that upon the death of the executor, suit may be maintained on a security payable to him as such, either by the representative of the executor, or by the administrator *de bonis non*. *Catherwood* v. *Chabaud*, 1 Barn. & C. 150. And this appears to be the prevailing view in America. *Williams* v. *Collins*, 1 B. Mon. 58; *Newhall* v. *Turney*, 14 Ill. 338; *Sheets* v. *Pabody*, 6 Blackf. 120, 38 Am. Dec. 132, and note; *Sullivan* v. *Holker*, 15 Mass. 374; 1 Williams Ex'rs, 631.

NOMINAL PARTNER—LIABILITY FOR TORT OF FIRM'S EMPLOYEE.—A was a nominal member only of a firm composed of B and C. An employee of the firm, while driving its wagon, negligently collided with plaintiff's team, causing injury to the latter. In an action against A, B and C for damages, the lower court held that A was liable as well as B and C. On appeal it was *Held*, That A being a nominal partner only, was not liable for the torts of the firm's employee—*Brudi* v. *Luhrman* (Ind. App.), 59 N. E. 409. No authority is cited.

The decision is right. The ground upon which a nominal partner is held for the liabilities of the firm, is that of estoppel. Having permitted himself to be held out as a partner, he is estopped to deny the fact, as to any person who has been misled by his conduct and thereby suffered injury, but not otherwise. That the liability of a nominal partner rests on the doctrine of equitable estoppel, and that

such a person is not liable to one who did not know of the holding out, and did not trust the firm in reliance on his credit—nor to one who knew that he was not in fact a partner—is now too well established to be questioned. *Thompson* v. *First National Bank of Toledo*, 111 U. S. 529; *Fletcher* v. *Pullen*, 70 Md. 205, 14 Am. St. 355; Lindley on Partnership (2d Am. ed.), 43; 1 Bates on Partnership, 90; Parsons on Partnership, 69; *Ala. Fertilizer Co.* v. *Reynolds*, 85 Ala. 19; *Hahlo* v. *Mayer*, 102 Mo. 93, 22 Am. St. Rep. 753, and note collecting the authorities.

There seems to be little or no authority as to the liability of the nominal partner for the torts of the firm or its employees. In *Stables* v. *Eley*, 1 Car. & P. 614, a nominal partner was held liable for the negligence of the firm's driver in causing a collision with the plaintiff's vehicle—precisely the same state of facts as existed in the principal case. But the question was not discussed, and the liability of the nominal partner had at that time (1824) probably not been definitely placed upon the ground of equitable estoppel. See Pollock's Digest of Partnership (6th ed.), 54.

It is doubtless true that where the tort of the firm arises out of a contract, or from trust and confidence reposed—as a bailment, employment as attorneys, surgeons, carriers, etc.—a case of equitable estoppel might arise, upon which the liability of the nominal partner might properly be based.